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SUBJECT: STATE LEGAL ADVISOR MEETS WITH EU COJUR GROUP

REF: BRUSSELS 00810

Classified By: Political Minister Counselor Laurence Wohlers for reasons 1.4 (b) and (d)

¶1. (C) Summary. John Bellinger, Legal Advisor at the State Department, met June 7 with his counterparts from the 27 EU member states and representatives from the Council and Commission Secretariat as part of the regular EU COJUR discussions. The three hour meeting was devoted to a discussion of the International Criminal Court (ICC). Bellinger noted that the U.S. and the EU share the same goals as the ICC in dealing with war crimes, crimes against humanity, and genocide. On more general legal issues apart from the ICC, Bellinger stressed that the ongoing dialogue between the US and EU has been beneficial in highlighting the complexity of the issues and in working toward a common, realistic appreciation that the War on Terrorism requires some new legal approaches. End Summary.

¶2. (C) Mr. Bellinger opened his remarks by stating that clarification of the US and EU positions on the ICC is always helpful, and stated that in his view both the US and the EU share in the overall goals of the ICC, especially in dealing with war crimes, crimes against humanity and genocide. He noted the 1990 U.S. Congressional resolution which expressed support for the creation of an International Criminal Court, while recognizing the need for such a court to provide for appropriate safeguards and protections. He stated that the Rome Statute founding the ICC does not offer sufficient safeguards and protections for U.S. personnel, and that we object to the ICC's purported assertion of jurisdiction over U.S. personnel, even though the U.S. is not a party, and that this is still the crux of the issue for the United States. Bellinger noted that President Clinton had previously stated that the Rome Statute was flawed and that he would not submit it to the Senate and that President Bush had formally notified the United Nations that the U.S. does not intend to become a party; Bellinger said he thought the U.S. position was unlikely to change.

¶3. (C) The question then becomes "what do we do now?" Bellinger noted that in the 2005-2007 period the United States has worked to adopt a practical approach to issues related to the ICC. The U.S. has regularly expressed its respect for the decisions of other nations to join the ICC, and we ask, in return, for respect for our position not to join. The United States did not veto U.N. Security Council Resolution 1593 referring the Darfur situation to the ICC. And the United States supported the idea of the ICC prosecution of Charles Taylor in The Hague because a trial in West Africa could have further destabilized the region. However, the United States maintains that justice in most such situations is best pursued locally.

¶4. (C) Mr. Bellinger then reviewed for his EU audience the U.S. laws that guide the U.S. ICC position, including the American Service Members Protection Act and the Article 98 agreements, now in place with 104 countries. Bellinger said the U.S. will continue to seek Article 98 agreements to protect U.S. officials. Bellinger also noted that it's unlikely the United States will participate in meetings on a proposed definition of "crime of aggression" being held by the ICC's Assembly of States Parties because of concerns that a U.S. presence would turn the discussion into a U.S./ICC one.

¶5. (C) A number of EU comments centered on the Darfur situation and a possible ICC role. Bellinger stated that the United States is open in theory to considering some cooperation with the ICC on Darfur if this would help to bring to justice perpetrators of serious crimes. Bellinger noted that the ICC had not requested any such assistance from the USG and that the USG would need to review any such request carefully.

¶6. (C) Mr. Bellinger summarized his conversation with the E.U. member states by asking that the EU acknowledge the U.S. sovereign decision not to be party to the ICC and the Rome Statue, and that both sides now move on to the next chapter.

WOHLERS

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